

BAY COUNTY ELECTION COMMISSION
PORTSMOUTH TOWNSHIP CLARITY
APRIL 15, 1991

THE BAY COUNTY ELECTION COMMISSION MET ON MONDAY, APRIL 15, 1991, IN THE COMMISSIONER'S GROUND FLOOR CONFERENCE ROOM OF THE BAY COUNTY BUILDING FOR THE PURPOSE OF DETERMINING CLARITY OF RECALL PETITIONS FILED IN REGARD TO SIX CERTAIN PORTSMOUTH TOWNSHIP OFFICIALS. THE MEETING WAS CALLED TO ORDER BY THE CHAIRMAN OF THE COMMISSION, JUDGE PAUL N. DONER, AT 2:50 P.M. THE FOLLOWING MEMBERS AND GUESTS WERE IN ATTENDANCE.

ROLL CALL: PAUL N. DONER, PROBATE JUDGE
 GEORGE MULLISON, PROSECUTOR
 BARBARA ALBERTSON, COUNTY CLERK
 CYNTHIA A. LUCZAK, SECRETARY
 DONALD KZEWINSKI, PETITIONER
 JOHN MCQUILLAN, ATTORNEY
 ROBERT PAWLAK, TWP. SUPERVISOR
 JUDITH BUKOWSKI, TWP. CLERK
 HENRY BRANDT, TWP. TREASURER
 JAMES BANASZAK, TWP. TRUSTEE
 CHARLES PAWLAK, TWP. TRUSTEE
 VIRGIL GATZA, TWP. TRUSTEE

IN ACCORDANCE WITH THE OPEN MEETINGS ACT, CHAIRMAN DONER ACCEPTED THE INPUT OF GUESTS AT THIS TIME.

AS NO ONE FROM THE PUBLIC WISHED TO ADDRESS THE COMMISSION, THE BOARD PROCEEDED WITH PETITION REVIEW. CHAIRMAN DONER EXPLAINED THE PROCEDURE USED IN THE PAST FOR PETITION CONSIDERATION.

PETITIONER KZEWINSKI COMMENTED ON THE PETITIONS HE HAD SUBMITTED BY STATING "I TRIED TO KEEP THEM AS SIMPLE AS I COULD". FURTHER, THAT HE HAD SUBMITTED TWO DIFFERENT PETITIONS TO THE TOWNSHIP BOARD IN REGARD TO THE SANITARY SEWER PROJECT. THE FIRST ONE BEING AN ADVISORY PETITION AND OTHER IN REFERENCE IN REFERENDUM LANGUAGE. BOTH HAD BEEN TABLED BY THE TOWNSHIP BOARD WITH THE INPUT OF THE TWP. ATTORNEY. UPON THE ADVISE OF THE TOWNSHIP ATTORNEY.

MR. MCQUILLAN HAD APPEARED ON BEHALF OF THE TOWNSHIP OFFICIALS NAMED IN THE RECALL PETITIONS. MR. MCQUILLAN CHALLENGED THE RECALL PETITION LANGUAGE FOR VARIOUS REASONS BY CITING MICHIGAN CASE LAWS. PURSUANT TO LAW, TOWNSHIP OFFICIALS WHO TOOK AN OATH OF OFFICE SHOULD NOT BE RECALLED FOR PERFORMING DUTIES THUS DESCRIBED BY THE OFFICE HELD OR MANDATED BY LAW. FURTHER, THAT THE RECALL PETITION DID NOT ALLEGE "MISCONDUCT" IN ACCORDANCE WITH MCLA 168.363.

IT HAD BEEN DETERMINED THE TOWNSHIP OF PORTSMOUTH

WOULD ENTER INTO A CONTRACT WITH THE COUNTY OF BAY ACTING AS AGENT, IN ORDER TO RECEIVE FUNDING FOR THE PUBLIC SANITARY SEWER PROJECT. WITHIN 45 DAYS OF THE CONTRACTS EXECUTION, THE TOWNSHIP ELECTORATE WERE ELIGIBLE TO PETITION FOR A REFERENDUM WHETHER OR NOT THE CONTRACT BE APPROVED OR DISAPPROVED. IN THAT TIME, PETITIONS REQUESTING SUCH HAD BEEN SUBMITTED TO THE TOWNSHIP CLERK. IN TURN, THE CLERK MUST REVIEW/CANVAS THE PETITIONS FOR REFERENDUM PER MCLA 46.175 (b) (2) AND MCLA 117.25. IT WAS THE DETERMINATION OF THE CLERK AND TOWNSHIP ATTORNEY, THAT THE PETITIONS WERE INSUFFICIENT FOR THE FOLLOWING FOUR REASONS...1) DATES APPEARED TO BE ENTERED IN THE SAME HANDWRITING, 2) PETITIONS DID NOT STATE WHO HAD DISTRIBUTED THEM, 3) VERIFICATION ON THE PETITIONS' SECOND SIDE, AT WHOSE REQUEST THE PETITION HAD BEEN CIRCULATED AND 4) PETITIONS WERE NOT NOTARIZED. (HERP VS. LANSING CITY CLERK, 1987)

MR. MCQUILLAN REFERRED TO A SIMILAR CASE SCENARIO RECENTLY DEALT WITH IN FRANKENLUST TOWNSHIP. DEFECTS IN PETITIONS SUBMITTED TO THE TOWNSHIP CLERK WERE CHALLENGED BY THE ELECTORATE BY WRIT OF MANDAMUS CIRCUIT COURT #91-3067. CIRCUIT COURT JUDGE, WILLIAM J. CAPRATHE RENDERED AN OPINION TO JUSTIFY THE ACTS OF THE TOWNSHIP CLERK IN DETERMINATION OF THE PETITION'S UNACCEPTABILITY. AS A RESULT, THE COMPLAINT FOR MANDAMUS WAS DISMISSED BECAUSE IT FAILED TO STATE A CAUSE OF ACTION FOR WHICH RELIEF COULD BE GRANTED.

IN THE PORTSMOUTH TOWNSHIP SITUATION, PETITIONERS CONTEND THE PETITIONS FORMERLY REFUSED BY THE BOARD, DENIED THEM A RIGHT TO VOTE ON THE ISSUE. REFERENDUM REQUIREMENTS HAD TO HAVE BEEN MET PRIOR TO ANY TYPE OF VOTING ELIGIBILITY. ALSO, THAT THE PORTSMOUTH TWP. BOARD HAD FELT THE CANVAS OF THE TOWNSHIP CLERK HAD BEEN CONDUCTED APPROPRIATELY AND ADOPTED A RESOLUTION IN SUPPORT OF HER EFFORTS.

TO SUMMARIZE, THE CLARITY OF THE PETITION SHOULD NOT BE GRANTED, IN MR. MCQUILLAN'S OPINION, AS ELECTED OFFICIALS COULD NOT BE RECALLED FOR ACTING WITHIN THE SCOPE OF THEIR STATUTORY DUTY; THAT THE LANGUAGE OF THE RECALL PETITION WAS VAGUE/INCORRECT; ALSO THAT FORMER PETITIONS TURNED DOWN BY THE TOWNSHIP BOARD, WERE DEEMED LEGALLY INSUFFICIENT.

MR. KZEWINSKI CONCURRED WITH THE SEQUENCE OF EVENTS REGARDING PETITIONS HE HAD FILED WITH THE TOWNSHIP BOARD. HE ENDORSED A VOTE OF AN ADVISORY NATURE IN REGARD IMPLEMENTATION OF THE SEWER PROJECT. A VOTE TAKEN IN FORMER YEARS, EVIDENCED NEGATIVE SUPPORT FOR THE PROJECT DUE TO VERY HIGH COSTS. REFERENCE WAS MADE TO THE SECOND PETITION HE HAD SUBMITTED TO THE TOWNSHIP BOARD, IN THAT IT WAS NOT LEGALLY ACCEPTABLE PER THE CLERK AND TOWNSHIP ATTORNEY. MR. KZEWINSKI FELT THE PEOPLE OF THE TOWNSHIP WERE NOT

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GIVEN AN OPPORTUNITY TO EXPRESS THEIR WISHES ON TWO DIFFERENT OCCASIONS. MR. KZEWINSKI QUESTIONED WHAT A AVERAGE CITIZEN MUST DO IN ORDER TO HAVE THEIR REQUESTS HEARD AND CONSIDERED.

CHAIRMAN DONER REMINDED THE PETITIONER THAT ANY PETITION TO BE CONSIDERED BY THE ELECTION COMMISSION OR TOWNSHIP BOARD, MUST COMPLY WITH LEGAL REQUIREMENTS. IT WAS THE OPINION OF JUDGE DONER, THAT THE TOWNSHIP CLERK ACTED PROPERLY IN DENIAL OF THE SANITARY SEWER PETITION AND THAT THE BASIS FOR THE RECALL PETITION WAS IMPROPER. MALFEASANCE OR MISFEASANCE IN OFFICE WOULD JUSTIFY THE RECALL, BUT NOT CHALLENGE OF THE DECISION RENDERED BY THE BOARD REGARDING THE SECOND SANITARY SEWER PETITION.

MR. KZEWINSKI INDICATED HE AND HIS SUPPORTERS HAD APPROACHED THE TWP. BOARD ON TWO SEPERATE OCCASIONS.

CLERK ALBERTSON QUESTIONED WHY MR. KZEWINSKI FELT THE TOWNSHIP CLERK SHOULD BE RECALLED WHEN REQUIRED TO PERFORM THE CANVASS OF THE SEWER PETITION DUTY. IN HER OPINION, THE RECALL LANGUAGE WAS UNCLEAR AS IT DID NOT SPECIFY WHAT THE PROBLEMS WERE IN REGARD TO THE SANITARY SEWER PROJECT. IT DID NOT "IDENTIFY" WHAT THE PROBLEM WITH THE PETITIONS WERE.

PROSECUTOR MULLISON CONCURRED WITH THE COMMENTS OF CLERK ALBERTSON. THAT THE TOWNSHIP OFFICIALS SHOULD NOT BE PENALIZED/RECALLED FOR NOT PERFORMING ANY ILLEGAL ACTION. THAT A RECALL SHOULD NOT BE AVAILABLE WHEN THE TOWNSHIP OFFICIAL ACTED IN THE LINE OF DUTY.

MOTION #1: PROSECUTOR MULLISON MOVED THAT THE PETITION WORDING BE DENIED FOR CLARITY AS A TOWNSHIP OFFICIAL CAN NOT BE RECALLED FOR PERFORMING THE DUTIES ASSIGNED BY STATE STATUTE. FURTHER, THE WORDING AS PRESENTED DID NOT CLEARLY IDENTIFY THE RECALL REQUEST. CLERK ALBERTSON SUPPORTED THE MOTION AND IT WAS CARRIED BY A ROLL CALL VOTE OF 3 YEAS, 0 NAYS.

JUDGE DONER OFFERED HIS INPUT AT THIS TIME. CHAIRMAN DONER FELT A RECALL WAS JUSTIFIED ONLY UNDER PARTICULAR SITUATIONS, NOT JUST BECAUSE THE ENTIRE ELECTORATE WAS UNABLE TO VOTE ON THE ISSUE. ENDORSED WERE OTHER REMEDIES OF SATISFACTION INCLUDING A WRIT OF MANDAMAS AS FRANKENLUST TOWNSHIP ATTEMPTED, APPELLATE PROCESSES OR FAILURE TO RE-ELECT THE BOARD MEMBER AT THE NEXT ELECTION. FOLLOWING THE CLOSING COMMENTS, THE SESSION ADJOURNED AT 3:30 P.M.

PAUL DONER, CHMN.
PROBATE JUDGE

GEORGE MULLISON
PROSECUTOR

BARBARA ALBERTSON
COUNTY CLERK

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GEORGE MULLISON CONCURRED WITH CHAIRMAN DONER. ALSO, THAT MR. KZEWSKI HAD FORMERLY ADMITTED THE PETITIONS SUBMITTED TO THE TOWNSHIP BOARD DID NOT MEET THE STATUTORY REQUIREMENTS. THEREFORE, THE BOARD ACTED PROPERLY BY NOT CONDUCTING AN ADVISORY VOTE ON IMPROPER PETITIONS.

IN ADDITION, THE RECALL LANGUAGE COULD NOT CONTAIN ANY IMPLICATIONS AS TO THE REASON FOR RECALL.

MOTION #5: BARBARA ALBERTSON MOVED TO ADJOURN THE CLARITY HEARING ON THE PETITION FOR RECALL OF PORTSMOUTH TOWNSHIP OFFICIALS. JUDGE DONER SUPPORTED THE MOTION AND IT WAS CARRIED BY A UNANIMOUS ROLL CALL VOTE. THE MEETING ADJOURNED AT 10: 50 A.M.

RESPECTFULLY SUBMITTED



BARBARA ALBERTSON
BAY COUNTY CLERK